

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-4714

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JAMES DANIEL BRAY,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Charlottesville. Norman K. Moon, District Judge. (CR-02-106)

Submitted: May 25, 2005

Decided: June 7, 2005

Before WILKINSON, MOTZ, and KING, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Andrew L. Wilder, Charlottesville, Virginia, for Appellant.
John L. Brownlee, United States Attorney, Jean B. Hudson, Assistant
United States Attorney, Charlottesville, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Following a jury trial, James Daniel Bray was convicted on two counts of coercion and enticement of a minor, in violation of 18 U.S.C.A. § 2422(b) (West Supp. 2005) (Counts 1 and 2), and one count of possession with intent to distribute marijuana, in violation of 21 U.S.C. § 841(a)(1) (2000) (Count 7). The court sentenced Bray to 204 months in prison, consisting of a 180-month sentence on Count 1, a 168-month sentence on Count 2 with all but twenty-four months to run concurrently, and a concurrent sixty-month sentence on Count 7. The district court also specified an identical alternative sentence of 204 months pursuant to this court's recommendation in United States v. Hammoud, 378 F.3d 426 (4th Cir. 2004) (order), opinion issued by 381 F.3d 316, 353-54 (4th Cir. 2004) (en banc), cert. granted and judgment vacated, 125 S. Ct. 1051 (2005).

Bray appeals, arguing that pursuant to United States v. Booker, 125 S. Ct. 738 (2005), his sentence violates the Sixth Amendment because it was enhanced under the mandatory federal sentencing guidelines scheme based on facts that were not found by a jury beyond a reasonable doubt. We conclude that, because the alternate sentence the district court pronounced pursuant to 18 U.S.C.A. § 3553 (West 2000 & Supp. 2005), treating the sentencing guidelines as advisory only, was identical to the sentence imposed under the mandatory federal sentencing guidelines as they existed

at that time, any error resulting from the sentence imposed by the district court was harmless. Booker, 125 S. Ct. at 769.

Accordingly, we affirm Bray's sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED